

INDEX.

	PAGE
I. Opinions Below	1
II. Statement	2
III. Summary of Argument	4
IV. Argument	5
V. Conclusion	6

AUTHORITIES CITED:

Bankruptcy Act, Section 75 (Frazier-Lemke Act)....	2, 6
Federal Rules of Civil Procedure, Rule 73 (a).....	6
Revised Rules of the Supreme Court of the United States, Rule 38 (2), (5)	6

THE UNIVERSITY OF CHICAGO
LIBRARY

18 11 18

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

No. 690.

In the Matter
of
MINNIOLA O. MILLER,
In Bankruptcy.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

**BRIEF OF TOWN OF SUFFIELD, CONNECTICUT,
IN OPPOSITION.**

I.

Opinions Below.

No opinion was filed by the Circuit Court of Appeals in connection with its denial on October 24, 1947 of the petitioner's motion for a rehearing of her motion to recall the mandate, vacate the order dismissing her appeal, reinstate the appeal and extend the time for filing the record.

II.

Statement.

On November 19, 1941 the petitioner, in an effort to foil the attempts of various creditors who were seeking satisfaction of their claims out of her real estate, filed in the District Court for the District of Connecticut a petition (No. 21141) under the Frazier-Lemke Act which was, on May 8, 1942, dismissed on the ground the petitioner was not a farmer. On May 20, 1942 the Town of Suffield, a Connecticut municipality, commenced an action in the Court of Common Pleas for the County of Hartford, State of Connecticut, to foreclose certain tax liens upon a portion of the petitioner's real estate, the complaint in said action reciting that the liens had resulted from the non-payment of municipal taxes upon such real estate from April 1935 to the date of the complaint. On June 18, 1942 the petitioner filed notice of appeal from the District Court's decision of May 8, 1942. However, the appeal was not perfected and, on December 10, 1942, it was ordered dismissed by the Circuit Court of Appeals, Second Circuit. Two days later, on December 12, 1942, another petition, the one which is concerned in the present proceeding, No. 21839, was filed under the then section 75 of the bankruptcy law, known as the Frazier-Lemke Act. After various hearings the Conciliation Commissioner on June 5, 1944 filed a finding in which it was concluded that the petitioner was not a farmer. The motion of the tax creditor, Town of Suffield, to dismiss the petition was granted and a memorandum of decision filed by the District Court, on October 26, 1944. The petitioner made a motion for a new trial

which was denied and she filed a notice of appeal on January 3, 1945. After she had obtained several orders extending the time for filing the record on appeal, the Circuit Court of Appeals, Second Circuit, filed an opinion on July 13, 1945, in which it requested, because of the confused state of the record, that the District Judge either certify the papers on which he acted or recall the appeal for such further action as he might think it best to take. Thereafter the appeal was remanded to the District Court, whereupon the petitioner filed a petition for review and a trial *de novo*. This matter was heard at length on February 11, 1946, at which time the petitioner was given an opportunity to argue any claimed errors of law made by the Commissioner. On May 16, 1946 the District Court again dismissed the petition.

On May 24, 1946 the petitioner filed a notice of appeal to the Circuit Court of Appeals, Second Circuit. Numerous extensions of time to file record and brief were sought by the petitioner and were granted. Finally, on May 23, 1947, an entire year having passed since the petitioner filed her notice of appeal, the Circuit Court of Appeals handed down a decision stating:

"Time to file record and brief extended up to and including September 15, 1947; if the appellant does not file within the time so extended the clerk will dismiss the appeal."

On September 15th another application for a further extension of time within which to perfect her appeal was heard by the Honorable Charles E. Clark, Judge of the Circuit Court of Appeals, in a Chambers hearing at New Haven and was denied. On October

3, 1947 there was filed in the Office of the Clerk of the District Court the mandate of the Circuit Court of Appeals, dated October 2, 1947, reciting that a motion to dismiss for lack of prosecution having been filed in the United States Circuit Court of Appeals, it was ordered, adjudged, and decreed that the petitioner's appeal be dismissed with costs.

On October 6, 1947 another motion by this petitioner, this one dated October 2, 1947, and moving that the Court recall the mandate, vacate the order of dismissal, reinstate the appeal and extend the time for filing the record to December 1, 1947, was argued before the Circuit Court of Appeals in New York and was dismissed.

On October 24, 1947, the Circuit Court of Appeals handed down a decision denying a motion for rehearing of the motion made and denied by that Court on October 6, 1947. The present petition for certiorari was filed with reference to the latter action of the Circuit Court of Appeals.

III.

Summary of Argument.

No ground for certiorari exists with respect to the action of the Circuit Court of Appeals in denying the petitioner's motion for a rehearing of her motion to recall the mandate, vacate the order of dismissal, reinstate the appeal and extend the time for filing the record.

IV.

Argument.

The petition for certiorari is an effort to obtain review of the exercise of the discretionary act of the Circuit Court of Appeals in denying the petitioner's motion for a rehearing on a matter the determination of which was itself wholly discretionary with the Court and which had been repeatedly considered and finally decided after every conceivable consideration had been shown to the petitioner. It was only after she had been, in effect, granted the extraordinary period of approximately one year and a half within which to perfect her appeal that it was finally decided that the litigation must end. It would appear obvious on the face of the record itself that the action of the Circuit Court of Appeals could not have been otherwise.

No brief has been submitted to the respondent in support of the petition for certiorari and it is, therefore, practically impossible to determine what the petitioner is urging as ground for relief. If the petition itself was intended to serve in place of a brief, it is apparent that the matter contained therein under the heading, "Reasons for Granting the Writ", has no relation whatever to any action by the Circuit Court of Appeals. In fact, it does not even refer to that Court and appears to be no more than a continuation of the equally irrelevant and scurrilous material which is set forth in the so-called affidavit offered in support of the motion to dispense with the printing of the petition and other papers. It is, therefore, respectfully submitted that neither the present petition nor the record in this case even

remotely suggests that there is any proper ground upon which certiorari might be granted.

Federal Rules of Civil Procedure, Rule 73 (a);
*Revised Rules of the Supreme Court of the
 United States*, Rule 38 (2), (5).

V.

Conclusion.

By reason of the premeditated delaying technique which has been employed by this petitioner taxes justly owing to the Town of Suffield over the past thirteen years have remained, and still remain, wholly unpaid. The rights of other creditors have been similarly forestalled. The only interest of the Town of Suffield in these proceedings is, and at all times has been, to secure the payment of the taxes which are properly owed to it by this landowner. She has persistently sought to use the Frazier-Lemke Act to avoid payment of her taxes and other just obligations, and she has never evidenced any desire or intention to compose and liquidate her indebtedness to the Town of Suffield and to her other creditors as is contemplated by that Act. On the contrary she has resorted to most of the devices known to the law and many heretofore unheard of in an effort to satisfy her apparently insatiable appetite for litigation.

Petitioner's claim that the Town of Suffield is somehow utilizing the provisions of the Frazier-Lemke Act to obtain her property appears in its ludicrous light when it is remembered that the petitioner, and not the town, initiated these proceedings and that the petitioner, and not the town, persists in carrying them on.

The record of this case presents the picture of an individual litigant appearing *pro se* who has to an unprecedented extent been indulged by court and counsel in order that she might not be prejudiced by her failure and refusal to employ an attorney. She has unconscionably squeezed every advantage from her status as a layman in the courts, persistently abusing the processes of the law in order to retain her property without meeting her obligations. She has been guilty of the grossest improprieties which would not be tolerated of any attorney. She has constantly and deliberately defamed parties and counsel and even, on one occasion, the District Court, for which latter she was found in contempt. It is significant to note that at one juncture in these proceedings the District Court, on its own motion, had her examined by a psychiatrist whose report is presumably in the files of that Court. To further answer the characteristic and grossly libelous and untrue statements contained in the present motion and petition would be to accord them unwarranted dignity.

Respectfully submitted,

HUGH M. ALCORN,

HUGH MEADE ALCORN, JR.,

Counsel for the Respondent.

APR 22 1948

CHARLES ELMORE GOSPEL
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 690

In the Matter of

MINNIOLA O. MILLER

Farmer-debtor

Petitioner

No. 21839

In Bankruptcy

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE SUFFIELD SAVINGS BANK

one of the Respondents

The Suffield Savings Bank, a mutual savings bank located in the Town of Suffield and State of Connecticut, respectfully represents:

On April 2, 1948 the Petitioner, Minniola O. Miller, pro se, served upon William H. Leete, Esquire, as "counsel for Respondent," a notice that a petition for a writ of certiorari had been filed in the Supreme Court of the United States by a type-written copy and motion to dispense with printing.

William H. Leete, Esquire, is counsel for the Suffield Savings Bank, of Suffield, whose connection with the case in question is limited to the fact that since 1926 it has had a mortgage on the premises now owned by the petitioner, Minniola O. Miller. The mortgage and note was originally made by A. Waldron Miller to the Suffield Savings Bank, dated June 10, 1926, and recorded in Suffield Land Records, in Volume 46, at Page 406. The original amount of the mortgage was \$10,000. On June 30, 1934 there was paid on account of principal the sum of \$950, leaving a balance of principal \$9,050. That mortgage covers two pieces or parcels of land with the buildings thereon.

The first piece was devised to the petitioner, Minniola O. Miller under the will of Ida B. Miller, by a certificate of devise dated December 16, 1937, and the second piece was conveyed to the petitioner, Minniola O. Miller, by George H. Miller by warranty deed dated April 25, 1936. No interest on the mortgage has been paid since 1941.

The claim of the Suffield Savings Bank is limited to the lien which the mortgage gives upon said premises and Minniola O. Miller is not personally indebted to the Suffield Savings Bank for the debt secured by said mortgage as she neither made the mortgage nor assumed the mortgage in connection with the conveyances to her. It, therefore, has no claim against Minniola O. Miller in bankruptcy, except to the extent that it is the owner of a secured claim, subject to taxes to the Town of Suffield, which this Petitioner avers and believes to be of considerable amount. No foreclosure proceedings have ever been instituted by the Suffield Savings Bank. The only paper served upon William H. Leete, Esquire, as counsel for the respondent, consists of typewritten papers for Motion for Leave to File Petition for Writ of Certiorari on Typewritten Papers, with a sworn statement by the Petitioner pro se in support of that application for leave to use typewritten papers, and a motion for leave to file petition for writ of certiorari, a copy of which petition is attached to the papers, but no brief on the merits and no copy of the record have been served upon said William H. Leete as counsel for the Suffield Savings Bank within ten days after the petition is filed.

For the foregoing reasons, the Suffield Savings Bank respectfully, so far as the matters are applicable to it, opposes the prayer that a writ of certiorari issue.

Respectfully submitted,

SUFFIELD SAVINGS BANK

By
✓ CHARLES WELLES GROSS
its Attorney

State of Connecticut }
County of Hartford } ss:

Samuel R. Spencer, of Suffield, being duly sworn, deposes and says that he is President of the Suffield Savings Bank, and that the foregoing facts are true to the best of his knowledge and belief.

Subscribed and sworn to
before me, this 12th day
of April, 1948,

SAMUEL R. SPENCER

STORRS T. BRIGHAM
Notary Public

(SEAL)